

ORIGINAL

FILED

April 15 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0470

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAMES LEON ALLEN,

Defendant and Appellant.

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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**MOTION FOR EXTENSION OF TIME
AND AFFIDAVIT IN SUPPORT**

COMES NOW, Sarah Chase Rosario y Naber, counsel of record for Defendant and Appellant, and respectfully requests an extension of time until May 21, 2010, in which to prepare, file, and serve the Appellant's opening brief in the above-entitled matter. In support of this motion, undersigned counsel respectfully submits the following affidavit.

Respectfully submitted this 15th day of April, 2010.

OFFICE OF THE STATE PUBLIC DEFENDER
Appellate Defender Office
139 N. Last Chance Gulch
P.O. Box 200145
Helena, MT 59620-0145

By: *Sarah Chase Rosario y Naber*
Sarah Chase Rosario y Naber
Assistant Appellate Defender

STATE OF MONTANA)
 : ss.

County of Lewis and Clark)

I, Chase Naber, being first duly sworn upon my oath, depose and state as follows:

1. I am a licensed, practicing attorney in the State of Montana, and am currently employed by the Office of State Public Defender, Appellate Defender Office, as an Assistant Appellate Defender.
2. In my capacity as Assistant Appellate Defender, I have been assigned to handle the above-entitled matter.
3. The Appellant's brief was first due on January 6, 2010. The Appellant's brief is presently due on April 21, 2010.
4. The Appellant's brief is ready to file with the Court, with the exception of the transcript of the sentencing hearing of May 29, 2009.
5. The trial and sentencing transcripts were requested August 24, 2009, but the certificate of service addressed the request to the wrong reporter.
6. The Court granted an extension for filing of the transcripts on October 8, 2009.
7. Trial transcripts were filed October 15, 2009 with the Court.

8. In preparation for filing Appellant's brief with the Court, the undersigned discovered she has the written order of sentencing, but not the transcripts of the May 29, 2009, sentencing hearing.

9. On this date, the request for transcripts of the sentencing hearing was placed in the reporter's box at the courthouse.

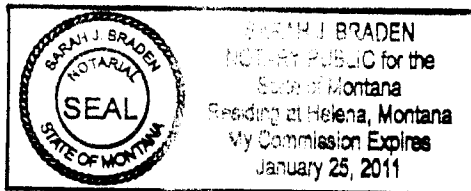
10. Opposing counsel has been contacted concerning this motion and does not object.

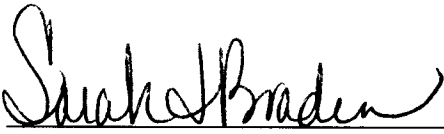
11. Further your affiant sayeth naught.



Sarah Chase Rosario y Naber

SUBSCRIBED AND SWORN to before me this 18th day of April, 2010.





Sarah J. Braden

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing
Motion for Extension of Time and Affidavit in Support to be mailed to:

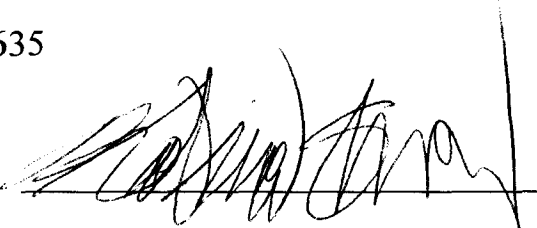
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JAMES ALLEN
P.O. Box 1833
East Helena, MT 59635

DATED: _____

4/15/10

A handwritten signature in black ink, appearing to be "John T. Flynn", written over a horizontal line.